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Federal Communications Commission
Office of Secretary

CC Docket 96-45

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Dated: September 24, 2002

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SUMMARY

Citizens Telecommunications Company of North Dakota (“Citizens”), and Nemont Telephone Cooperative, Inc. (Nemont), and Missouri Valley Communications, Inc., (“MVCI”) and Reservation Telephone Cooperative, (“RTC”) (collectively, the “Acquiring Companies”) request waiver of the definition of “study area” contained in the Appendix-Glossary of Part 36 of the Federal Communications Commission’s (“Commission”) Rules. The purpose of this waiver is to allow Citizens to sell the assets of its Williston, North Dakota exchange (approximately 9349 access lines) to MVCI and its Alexander and Watford City, North Dakota exchanges (approximately 236 and 1113 access lines, respectively) to RTC. The proposed transaction will entail the deletion of the Williston, Alexander and Watford City exchanges from Citizens’ North Dakota study area, and the addition of these exchanges to the existing North Dakota study areas of Nemont and RTC.

In addition, RTC seeks a waiver of the Commission’s rule Section 61.41 (c)(2) so that it may be regulated under rate of return once the assets of Citizens are acquired. Nemont seeks a waiver of the definition of “average schedule company” included in Section 69.605(c) of the Commission’s Rules. The Acquiring Companies also seek a waiver of Section 69.3(e)(11) of Commission’s Rules concerning participation in the NECA carrier common line tariff, as necessary.

Petitioners respectfully request that the Commission expeditiously review and approve this Petition. The Petition raises no new issues of law, is supported by Commission precedent, and the facts involved in this Petition clearly demonstrate that the public interest will be served by an expeditious grant. Grant of this Petition will afford the residents and business customers of these rural exchanges the benefits of the planned transfers.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20551**

In the Matter of)
)
Citizens Telecommunications Company)
of North Dakota)
)
Nemont Telephone Cooperative, Inc)
)
Missouri Valley Communications, Inc.)
)
Reservation Telephone Cooperative)
)
Joint Petition for Waiver of the Definition of "Study Area")
Contained in Part 36, Appendix—Glossary of the)
Commission's Rules)
)
Petition for Waiver of Section 61.41(c)(2),)
Section 69.3(e)(11) and 69.605(c) of the)
Commission's Rules)

TO: Chief, Common Carrier Bureau

JOINT PETITION FOR EXPEDITED WAIVERS

Citizens Telecommunications Company of North Dakota ("Citizens"). and Nemont Telephone Cooperative, Inc. (Nemont) and Missouri Valley Communications, Inc., ("MVCI") and Reservation Telephone Cooperative, ("RTC") (collectively, the "Acquiring Companies"), by their attorneys, hereby request waiver of the definition of "study area" contained in the Appendix-Glossary of Part 36 of the Commission's Rules.¹ The purpose of this waiver is to allow Citizens to sell the assets of its Williston, North Dakota exchange (approximately 9349 access lines) to MVCI and its Alexander and Watford City, North Dakota exchanges (approximately 236 and 1113 access

¹ The original of this Petition is being filed in Pittsburgh, PA. Copies of the Petition are being hand-delivered to the parties listed on the attached certificate of service.

lines, respectively) to RTC. The proposed transaction will entail the deletion of the Williston, Alexander and Watford City exchanges from Citizens' North Dakota study area. and the addition of these exchanges to the existing North Dakota study areas of Nemont and RTC. RTC also seeks a waiver of the Commission's rule Section 61.41 (c)(2) so that it may be regulated under rate of return once the assets of Citizens are acquired. In addition, Nemont seeks a waiver of the definition of "average schedule company" included in Section 69.605(c) of the Commission's Rules. The Acquiring Companies also seek a waiver of Section 69.3(e)(11) of Commission's Rules concerning participation in the NECA carrier common line tariff. as necessary

The Commission is requested to review and approve this Petition expeditiously as the Parties desire to close the transaction by February 2003. No new issues of law are raised by the Petition and the facts and circumstances supporting grant are similar in material and relevant respects to those involved in waiver requests that have been approved recently.'

² See, e.g., Dickey Rural Telephone Cooperative, Dickey Rural Access, Inc., Polar Telecommunications, Inc., Red River Rural Telephone Association, Red River Telecom, Inc. and Citizens Telecommunications Company of North Dakota, Joint Petition for Waiver of the Definition of "Study Area" Contained in the Part 36, Appendix-Glossary of the Commission's Rules and Petition for Waiver of Sections 61.41(c), and (d), 69.3(e)(11) and 69.605(c), CC Docket 96-45, Order, DA 02-2260 (WCB 2002) ("Dickey Rural Petition"); In the Matter of Petition for Waivers Filed by Union Telephone Company, Inc. and U S WEST Communications, Inc. Concerning Section 61.41(c)(2) and 69.3(e)(11) and the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules, Memorandum Opinion and Order, 12 FCC Rcd. 1840 (1997); In the Matter of Petitions for Waivers Filed by Alpine Communications, L.C., Butler-Bremer Mutual Telephone Company, Clarksville Telephone Company, Dumont Telephone Company, Grand River Mutual Telephone Corporation-Heartland Corporation, South Central Communications, Inc., Universal Communications, Inc. and U S WEST Communications, Inc. Concerning Sections 61.41 (c)(2), 69.3(e)(11), 69.3(i)(4), 69.605(c) and the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules, Memorandum Opinion and Order, 12 FCC Rcd. 2367 (1997)

I. BACKGROUND

A. Citizens Telecommunications Company of North Dakota

Citizens presently owns and operates eight local telephone exchanges in North Dakota. Citizens has previously entered into agreements to sell five exchanges and has sought and obtained the Commission's approval of a study area waiver associated with those sales.³ This transaction reflects the sale of the Williston, Alexander and Watford City exchanges to MVCI and RTC. These three exchanges collectively serve approximately 10,698 access lines and are part of Citizens' consolidated North Dakota study area. Citizens is a price cap carrier.

B. Missouri Valley Communications, Inc.

MVCI is a North Dakota company that was created to purchase and operate the Williston exchange (approximately 9349 access lines). MVCI is owned 50% by Nemont and 50% by Valley Telecommunications, Inc. (Valley). Valley is owned 100% by Nemont. Nemont serves approximately 236 access lines within its existing North Dakota study area. Valley currently does not operate in North Dakota. Nemont and Valley also have a combined study area in Montana. MVCI, comprised of the Williston exchange, will be added to the existing Nemont North Dakota study area.

Nemont is an Issuing Carrier in the NECA interstate access tariffs and receives settlements for its North Dakota study area from NECA on an average schedule basis. Nemont has never elected to operate pursuant to price cap regulation.

MVCI and Nemont desire to operate as average schedule carriers after the acquisition of the Citizens' assets.

³ Dickey Rural Petition, CC Docket 96-45, Order, DA 02-2260. (WCB 2002).

C. Reservation Telephone Cooperative

Reservation Telephone Cooperative (RTC) is a North Dakota telephone company that presently serves approximately 7,808 access lines within its North Dakota study area,

RTC is a non-average schedule company and has never elected to operate pursuant to price cap regulation. RTC desires to continue to operate as a non-average schedule company after the acquisition of the Citizens' assets.

II. PRICE CAP "ALL OR NOTHING" WAIVER

The Commission's Rules establish two primary regulatory regimes for the provision of interstate exchange access by local exchange carriers (LEC) – rate of return⁴ and price caps.⁵ Further, the Commission's price cap rules require that when a non-average schedule company acquires a price cap company or a portion of a price cap company, the acquiring company and any LEC with which it is affiliated, must then be subject to price cap regulation.⁶ In the instant case, and in the absence of the requested waiver, RTC, a non-average schedule company, would be subject to interstate price cap regulation for its provision of exchange access because Citizens is currently a price cap company.

As demonstrated below, application of the "All or Nothing" rule would be inconsistent with the public interest. Accordingly, waiver of this rule, as it may be applied to this transaction, is justified.'

⁴ See, generally, 47 C.F.R. §§61.38 and 61.39.

⁵ See, generally, 47 C.F.R. §61.41

⁶ See, 47 C.F.R. §61.41(c)(2). This rule provision is also known as the "All or Nothing" rule.

⁷ The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the "public interest." Walt Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 93 S. Ct. 461 (1972).

The Commission's decision to substitute price cap regulation for rate of return regulation was based on several factors and several presumptions. As a result, mandatory price cap regulation was applied only to the largest LECs and specifically made optional for smaller LECs such as RTC, a rural company with a study area of approximately 7,808 access lines. The considerations which led the Commission to refrain from imposing price cap regulations on small, rural companies are equally applicable to this situation.'

The Commission implemented price caps as an incentive to encourage efficiencies and thereby promote competitiveness within the industry. Price cap regulation, however, was applied on a mandatory basis only to the Regional Bell Operating Companies and **GTE**, in recognition that these companies share similarities which support price cap regulation – geographic diversity, enormous subscriber bases, high activity levels in both regulated and nonregulated markets, and access to national markets. The Commission specifically targeted the appropriate companies to be regulated under the price cap system “large, publicly-traded firms, that compete daily for sales of nonregulated products and services, in the financial markets, and in the labor markets”⁸. Thus, the Commission's regulatory framework was premised upon its application to companies with a diverse and broad scope of operation.

In refusing to impose price cap regulation universally upon all LECs, the Commission itself acknowledged the potential adverse effects of this regulatory structure when applied to smaller LECs. Noting that small and mid-size companies may have fewer opportunities to achieve cost

⁸ See, Minburn Telecommunications, Inc., 14 FCC Rcd 14184 (Com. Car. Bur. 1999), US WEST Communications, Inc. and Nemont Telephone Cooperative, Inc. et al., 9 FCC Rcd 198 (Com. Car. Bur. 1993); US WEST Communications, Inc. and Triangle Telephone Cooperative Association, Inc. et al., 9 FCC Rcd **202** (Com. Car. Bur. 1993).

⁹ In the Matter of Policy and Rules Concerning Rates for Dominant Carriers. Second Report and Order, 5 FCC Rcd. 6786, 6790-91 ¶ 33 (1990) (“Price Cap Order”); see also Order on Reconsideration, 6 FCC Rcd. 2637 (1991), affd sub nom., National Rural Telecom Ass’n v. FCC, **988** F.2d 174 (D.C. Cir. 1993).

savings and efficiencies, the Commission acknowledged that these companies are less viable candidates for price caps. In particular, the Commission recognized that a major component of its price cap regime, the productivity factor element, was potentially inapplicable to these types of companies¹⁰ The Commission concluded that the “evidence accumulated in [the price cap] proceeding casts doubts on whether all carriers below the largest eight in size can reasonably attain the productivity goal required by the price cap index.””

Based on the Commission’s policy pronouncements noted above, RTC is exactly the type of small, rural carrier which the Commission previously found to be an inappropriate candidate for price cap regulation. As indicated, the RTC study area currently has approximately 7,808 access lines. Even after the proposed transaction, the RTC study area, with a total access line count of approximately 9,157, will be significantly smaller than any of the carriers subject to mandatory price cap regulation. It also will be far smaller than many other carriers that have been granted waivers of Section 61.41(c)(2) of the Commission’s Rules.” Accordingly, in balancing the benefits

¹⁰ See, Price Cap Order, 5 FCC Rcd. at 6799 ¶ 103.

¹¹ Id. ¶ 104.

¹² See, e.g., CenturyTel of Northwest Arkansas, LLC et al., Joint Petition for Waiver of Definition of “Study Area” Contained in the Part 36 Appendix-Glossary of the Commission’s Rules, Petition for Waiver of Sections 61.41(c) and 69.3(g)(2) of the Commission’s Rules, CC Docket No. 96-45, Memorandum Opinion and Order, DA 00-1434 (Acc. Pol. Div. Rel, June 27, 2000) (approving the conversion of 214,270 access lines from price cap to rate-of-return regulation); ALLTEL/Aliant Merger Order (approving the conversion of approximately 300,000 access lines from price cap to rate-of-return regulation); In the Matter of ALLTEL Service Corporation. Petition for Waiver of Section 61.41 of the Commission’s Rules. Order, 8 FCC Rcd. 7054 (Com. Car. Bur. 1993) (approving the conversion of approximately 285,000 access lines from price cap to rate-of-return regulation).

to be gained under price cap regulation against the costs that would be incurred by this small, rural LEC, it is clear that the public interest is better served by a grant of the instant waiver request.”

Finally, the Commission has indicated that its two primary concerns regarding price cap waivers are “cost-shifting between affiliates”¹⁴ and “gaming the system,” i.e., “building up a large rate base under rate of return regulation, then opting for price caps again and cutting its costs to an efficient level.”¹⁵ Neither situation is present here.

First, RTC, upon completion of this transaction, will operate the to-be-acquired exchange separate and apart from Citizens. This transaction culminated as a result of an “arms-length” transaction between stand-alone entities. No ownership, directorate, or management affiliation between RTC and Citizens will arise from this transaction. With regard to concerns about “gaming the system,” as operationally distinct entities, it is not possible for Citizens to gain any economic benefit from a grant of this requested waiver to RTC. Further, even assuming the possibility exists.

¹³ Past Commission actions have shown that the Commission is sensitive to minimizing regulatory and administrative burdens upon small LECs. See, e.g., In the Matter of Regulation of Small Telephone Companies, Repon and Order, 2 FCC Rcd 3811 (1987) (“Small Company Order”), In the Matter of Regulatory Reform for Local Exchange Carriers Subject to Rate of Return Regulation, Repon and Order, 8 FCC Rcd. 4545, 4548 ¶ 21, 4556 ¶ 76, 4559-60 ¶ 96 (1993) (“Small Company Optional Incentive Order”), pets for recon. denied, pet. for clarification granted, Order on Reconsideration, 12 FCC Rcd 2259 (1997).

¹⁴ See, In the Matter of U S WEST Communications, Inc. and Eagle Telecommunications, Inc. Joint Petition for Waiver of the Definition of “Study Area” Contained in Part 36, Appendix-Glossary of the Commission’s Rules and Eagle Telecommunications, Inc. Petition for Waiver of Section 61.41(c) of the Commission’s Rules, Memorandum Opinion and Order, 10 FCC Rcd. 1771, 1775 ¶¶ 23-24 (footnote omitted) (1995) (“Eagle Decision”), aff’d on recon., Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd. 4664 (1997).

¹⁵ Id. ¶ 23 (footnote omitted), A similar set of criterion also was considered by the Commission’s Accounting and Audits Division. See In the Matter of U S WEST Communications, Inc., Comer Valley Telephone, Inc., Midvale Telephone Exchange, and Table Top Telephone Company Joint Petition for Waiver of the Definition of “Study Area” Contained in Part 36 Appendix-Glossary of the Commission’s Rules and Copper Valley Telephone, Inc., Midvale Telephone Exchange, and Table Top Telephone Company Petition for Waiver of Section 61.41(c) of the Commission’s Rules, Memorandum Opinion and Order, 10 FCC Rcd. 3373, 3376-77 ¶ 18 (1995) (“Copper Valley”), aff’d on recon., Memorandum Opinion and Order, DA 99-1845, rel. Sep. 9, 1999.

the Commission would be in a position to investigate its concerns in a subsequent proceeding because, as the Commission has previously noted, any Citizens “reacquisition would require a second study area waiver.”¹⁶

As demonstrated herein, RTC submits that the efficiencies created by the purchase and sale of the Alexander and Watford City exchanges to RTC outweigh any concern over “gaming the system.” RTC is not affiliated with Citizens and is not within the class of carrier deemed by the Commission to be a candidate for price cap regulation. Accordingly, in that the public interest would be best served by permitting RTC to operate the Alexander and Watford City exchanges under interstate rate of return regulation, RTC submits that a narrow waiver of the “All or Nothing” rule, is both appropriate and consistent with existing Commission policy.

III. AVERAGE SCHEDULE WAIVER

As indicated herein, Nemont is an average schedule company and it wishes to retain its average schedule status. Thus, Nemont requests a waiver of Section 69.605(c), so that Nemont may retain average schedule status when the Citizens exchanges are added to its existing average schedule study area in North Dakota.

Section 69.605(c) defines an “average schedule company” as a telephone company that was participating in average settlements on December 1, 1982.¹⁷ This definition “grandfathers” existing average schedule companies as of December 1, 1982, but precludes the creation of new average schedule companies or the conversion of cost companies to average schedule companies after that date without a waiver from the Commission.¹⁸ In addition, pursuant to this section, an average schedule company acquiring additional lines would be required to convert to operation as a cost-

¹⁶ Copper Valley, 10 FCC Rcd. at 3377.

¹⁷ 47 C.F.R. §69.605(c).

¹⁸ See, Wilderness Valley Telephone Company, 13 FCC Rcd 4511 (1998)

based company unless it obtained a waiver¹⁹ Accordingly, Nemont must obtain a waiver of the rule to continue operating as an average schedule company

As noted in Jordan-Soldier Valley Telephone Company and Alpine Communications, L.C.,²⁰ the special circumstances that the Bureau has found to justify waivers of Section 69.605(c) fall into three broad categories, including a category “to ensure a smooth settlement process”²¹ The Commission has found in previous cases that a waiver is warranted in situations, such as this, where a new company will share the study area with an average schedule affiliate. According to the Commission, a waiver is warranted because of the special circumstance created by the interaction of two Commission policies, namely 1) the Commission generally requires newly acquired exchanges to be added to existing study areas in the same state and 2) jurisdictional separations and Universal Service Fund (USF) assistance are determined at the study area level Thus, all affiliates in a single study area must be under the same settlement method for performing interstate settlements. Application of Section 69.605(c) in such circumstance would have the unintended effect of requiring the parent company to convert to cost-based settlement in order to be able to acquire the subject exchange. The Commission has found that this effect could be unnecessarily burdensome on the new company and its parent

The proposed transaction satisfies the same special circumstances as those found to justify prior “smooth settlement process” category Section 69.605(c) waivers MVCI is seeking to acquire a small, rural exchange and join the existing Nemont North Dakota study area. and Nemont is an

¹⁹ Dickey Rural Petition, CC Docket 96-45, Order, DA 02-2260. (WCB 2002)

²⁰ Jordan-Soldier Valley Telephone Company and Alpine Communications, L.C., CC Docket No. 9645, DA 00-2473 (Acc. Pol. Div., rel. Nov. 3, 2000) at para. 13.

²¹ See Baltic Telecom Cooperative et al., AAD No. 96-95, 12 FCC Rcd 2433 (Acc. Aud. Div. 1996); Accent Communications, Inc. et al., AAD No. 95-124, 11 FCC Rcd 11513 (Acc. Aud. Div. 1996); BEK Communications I, Inc. et al., AAD No. 95-72, 11 FCC Rcd 10855 (Acc. Aud. Div. 1996).

existing and established average schedule company. **As** noted in this Petition, the proposed transaction will create significant public interest benefits.

If Section 69605(c) were applied to the proposed transaction, it could have the unintended effect of requiring Nemont to convert its existing exchanges from average schedule status to cost-based settlements. Such a conversion would be unduly burdensome because Nemont and MVCI would have to spend time, effort and funds on cost studies that heretofore were used to improve the quality of service furnished to subscribers. In addition, Nemont estimates that it would cost approximately \$62,000 in annual recurring cost and \$25,000 in non-recurring cost to perform the required cost studies. The high cost of completing a cost study relative to the small size of Nemont and MVCI further demonstrates that a waiver is warranted.

In previous similar circumstances where a waiver was granted, the Commission has imposed certain requirements to ensure that there is no unintended effect on interstate revenue requirements or in administrative burdens on the Commission or NECA. First, the Commission has required the companies and their affiliates to report to NECA on a combined basis for interstate average schedule and USF purposes, subject to the limitations established on USF for acquired exchanges. Second, if any affiliate converted from average schedule status to cost-based settlements, or elected Section 61.39 treatment, the Commission required all other affiliates to convert to that settlement status. Third, the Commission permitted the average schedule status of the companies to remain in effect only while they were under common control with their respective affiliates.

Nemont and MVCI are willing to accept these conditions to ensure that the waiver will not result in unintended effects on the petitioners' interstate revenue requirements or result in an administrative burden on the Commission or NECA.

IV. WAIVER OF SECTION 69.3(e)(11)

The Acquiring Companies also request a waiver of Section 69.3(e)(11), if necessary, in order to continue to allow them to use NECA as their tariff pool administrator. Section 69.3(e)(11) requires that any changes in **NECA** common line tariff participation and long term support resulting from a merger or acquisition of telephone properties are to be made effective on the next annual access tariff filing effective date following the merger or acquisition. Thus, Section 69.3(e)(11) may preclude the Acquiring Companies from participating in the NECA common line tariff until the next annual access tariff filing effective date following the consummation of the acquisition transaction. This would require the Acquiring Companies to file interstate tariffs, and assume the cost and administrative burden associated with that process. Moreover, the inclusion of the small number of acquired access lines in the NECA carrier common line tariffs would represent a minimal increase in NECA common line pool participation and would not unduly increase the complexity of administering the LTS program.²²

In light of the fact that the Acquiring Companies are extremely small carriers and the administrative and financial burdens that could result in the absence of a waiver, they request a waiver of Section 69.3(e)(11) to the extent necessary for them to add the Citizens exchanges to their study areas and include them in the **NECA** pools upon the closing date of this acquisition.

²² See, e.g., Saddleback Communications and Qwest Corporation, CC Docket No. 96-45 (**DA** 01-2777) (Acc. Pol. Div.) (rel. November 30, 2001) (Commission granting waiver of 69.3(e)(11) for the acquisition of approximately 2700 access lines).

V. STUDY AREA WAIVER

~~Part~~ 36 of the Commission's rules "freezes" the definition of "study area" to the boundaries that were in existence on November 15, 1984²³ This "freeze" was due, in part, to the Commission's concern over the level of interstate cost recovery by LECs from the Universal Service Fund ("USF"). "[t]he Commission took that action, in part, to ensure that LECs do not set up high cost exchanges within their existing service territories as separate study areas to maximize high cost support."²⁴ At the same time, the Commission also recognized that its rules were not aimed at discouraging "the acquisition of high cost exchanges or the expansion of service to cover high cost areas"²⁵ Indeed, the Commission's Common Carrier Bureau ("Bureau") implemented this policy decision by holding that changes in study areas that "result from the purchase or sale of exchanges in arms-length transactions" "do not conflict" with the concerns prompting the study area freeze²⁶

The Commission has also established a three-prong test for deciding whether study area waivers should be granted. The Commission should approve such waiver requests if it determines:

[F]irst, that the change will not affect adversely the USF support programs,

[S]econd, that the state commission having regulatory authority does not object to the change; and

²³ See, 47 CFR Part 36, Appendix — Glossary

²⁴ Eagle Decision, 10 FCC Rcd. At 1773 ¶ 10, citing In the Matter of MTS and WATS Market Structure Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 78-72 and 80-286, 50 Fed. Reg. 939 (Jan. 8, 1985).

²⁵ In the Matter of MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 78-72 and 80-286, 49 Fed. Reg. 48325, 48337 ¶ 65 (Dec. 12, 1984)

²⁶ In the Matter of Contel of the West Petition for Waiver of Section 36.125(f), Sections 36.154(e)(1) and (2), and the Definition of "Study Area" contained in Part 36. Appendix-Glossary, of the Commission's Rules Oregon-Idaho Utilities, Inc., Petition for Waiver of the Definition of "Study Area" contained in Part 36. Appendix-Glossary, of the Commission's Rules, Memorandum Opinion and Order, 5 FCC Rcd 4570, 4571 ¶ 9 (1990) (emphasis added).

[F]inally, that the public interest supports grant of the waiver²⁷

As demonstrated herein, the overall concern prompting the “freeze” in study areas is not an issue in this transaction, and the Commission’s three-prong test will be satisfied. Accordingly, the Petitioners respectfully request that the Commission grant the study area waiver permitting: (1) Citizens to remove the Williston, Alexander and Watford City exchanges from its North Dakota study area; (2) the affiliation of the Williston exchange with Nemont’s existing North Dakota study area; (3) the affiliation of the Alexander and Watford City exchanges with RTC’s existing North Dakota study area.

A. The USF Impact Arising From This Transaction

Pursuant to Section 54.305(a) of the Commission’s rules, carriers purchasing high cost exchanges can only receive the same level of high cost support per line as the seller received prior to the sale, except that carriers may be eligible for “safety valve” support for post-transaction investments to enhance network infrastructure.²⁸ Safety valve support can be provided for up to 50% of any difference between the index year expense adjustment and the subsequent year expense adjustment. However, total safety valve support is limited to no more than 5% of rural incumbent LEC support available from the annual high cost loop fund. This means that the Acquiring Companies will receive the same amount of high cost support as Citizens currently receives in these North Dakota exchanges, unless and until they become eligible for additional safety valve support, which would be of a limited nature by rule.

²⁷ See, Eagle Decision, 10 FCC Rcd. at 1772 ¶5 (footnote omitted)

²⁸ See, 47 CFR §54.305(a).

In addition, as a result of the MAG Order,²⁹ the Acquiring Companies will be eligible for additional interstate common line support (ICLS) as a result of the acquisition. Nemont estimates that as a result of this transaction, it will receive additional annual ICLS of \$466,960. RTC estimates that it will receive additional annual ICLS of \$125,991. In the MAG Order, the Commission specifically provided for the calculation of additional ICLS when a rate-of-return carrier acquires telephone exchanges from a price cap carrier. The Commission also found that the restrictions on the transfer of intrastate high-cost universal service support in section 54.305 of the rules should not apply to ICLS. According to the Commission, section **54.305** was necessary to prevent a potential increase in the acquiring carrier's universal service support payments from unduly influencing its decision to acquire exchanges. The Commission found that this concern is not present with respect to ICLS because ICLS for rate-of-return carriers will be based at least in part on an individual carrier's embedded costs. Thus, the Commission did not restrict the ability of carriers to receive additional ICLS in connection with the acquisition of exchanges.³⁰

In evaluating whether a study area boundary change will have an adverse impact on the universal service fund, the Commission analyzes whether a study area waiver will result in a more

²⁹ Multi-Association Group Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers in CC Docket No. 00-256, Federal-State Joint Board on Universal Service in CC Docket No. 96-45, Access Charge Reform for Incumbent Local Exchange Carriers Subject to Rate-of-Return Regulation in CC Docket No. 98-77, Prescribing the Authorized Rate of Return From Interstate Services of Local Exchange Carriers in CC Docket No. 98-166, Second Report and Order and Further Notice of Proposed Rulemaking, Fifteenth Report and Order, and Report and Order, 16 FCC Rcd 19613 (2001), (MAG Order), recon pending.

³⁰ Id. at 19667-69

than 1% change in the total high-cost fund.” The instant study area waivers will not result in a greater than 1% change in the total high-cost fund and, therefore, the universal service fund will not be adversely affected by grant of the waivers. The Acquiring Companies will be limited to the same per-line levels of support that Citizens was receiving for high cost loop support, local switching support, and long term support, pursuant to section 54.305(a) of the Commission’s rules. Although the Acquiring Companies may be eligible for safety valve support for investments in acquired lines, there is no reason to believe that this amount could realistically exceed \$59 million, or 1% of the total high-cost fund for the year 2002, in light of the number of lines involved in the transaction and the caps on safety valve support. Finally, the additional ICLS support that the Acquiring Companies will receive as a result of the waivers will not result in a more than 1% change in the total high cost fund. As indicated, Nemont and RTC estimate that they will be eligible for additional ICLS support in the amounts of \$466,960 and \$125,991, respectively, totaling \$592,951.

The combined total amount of additional ICLS that the Acquiring Companies estimate they will receive and safety valve support that the Acquiring Companies may be eligible to receive will be less than 1% of the total high cost fund. Therefore, there will be no adverse impact on the universal service fund.

B. State Commission Approval

On August 23, 2002, MVCI and RTC each filed an application for certificate of public convenience and necessity with the North Dakota Public Service Commission, in which they asked the Commission to state in its final order that it does not object to the grant of this study area waiver.

³¹ Dickey Rural Telephone Cooperative. Dickey Rural Access, Inc. Polar Telecommunications, Inc. Red River Rural Teleohone Association. Red River Telecom. Inc. and Citizens Telecommunications Company of North Dakota. Joint Petition for Waiver of the Definition of “Study Area” Contained in the Part 36. Appendix-Glossary of the Commission’s Rules and Petition for Waiver of Sections 61.41(c), and (d), 69.3(e)(11) and 69.605(c), CC Docket 96-45, Order, DA 02-2260, at paras. 10-13 (WCB 2002).

The petitioners will supplement this Joint Petition for Expedited Waivers when the Commission issues its respective orders.

C. The Public Interest Will Be Served by Grant of the “Study Area” Waivers Requested Herein

RTC is an established local exchange carrier with a proven record of providing high-quality telecommunications facilities and services to residents and businesses in rural North Dakota. Similarly, MVCI will be affiliated with Nemont, also an established local exchange carrier with a proven record of providing high-quality telecommunications facilities and services to residents and businesses in rural North Dakota. These companies desire to expand their operations into the Citizens’ exchanges, which are contiguous to their current operations. Once acquired, these exchanges will be under local ownership and management, whereas as part of Citizens, they are not. The Acquiring Companies, which **will** have local management and service personnel, expect to provide enhanced customer response time and service.

As detailed above, the operation of Section 54.305(a) of the Commission’s Rules means that, by definition, there can be no adverse impact on the high cost USF from the subject transactions and proposed study area boundary changes. In addition, information concerning the impact of safety valve support and ICLS on the universal service fund has been provided, herein. Hence, it appears that the supplemental information requested by the Bureau in its Public Notice” is no longer necessary or relevant, because it deals with universal service support impact calculations that no longer need to be made and several recent study area waiver petitions have been accepted and granted without this supplemental information³² If, however, the Bureau determines that some

³² Common Carrier Bureau Establishes Expedited Processins Procedures for Petitioners Seeking Part 36 Study Area Waivers, 10 FCC Rcd 13228 (1995)

³³ See, Valor Telecommunications of Texas LP and GTE Southwest Incorporated, 15 FCC Rcd 15816 (2000); ATEAC. Inc. , 16 FCC Rcd 849 (2001)

or all of this supplemental information remains necessary and relevant, this Petition will be amended

VI. CONCLUSION


For the reasons stated herein, Petitioners respectfully request that the Commission expeditiously review and approve this Petition. This Petition raises no new issues of law, is supported by Commission precedent and the facts involved in this petition clearly demonstrate that the public interest will be served by such an expeditious grant. Petitioners respectfully submit that an expeditious grant of this Petition will serve the public interest by affording the residents and business customers of these rural exchanges the benefits of the planned transfers.

Respectfully submitted,

NEMONT TELEPHONE COOPERATIVE, INC.

MISSOURI VALLEY COMMUNICATIONS, INC.

RESERVATION TELEPHONE COOPERATIVE

By Benjamin H. Dickens, Jr. 

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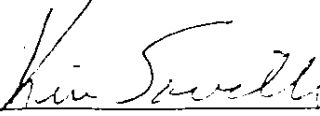
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**CITIZENS TELECOMMUNICATIONS
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By _____

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Dated: September 23, 2002

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing were served by hand delivery on this 24th day of September, 2002, to the persons listed below:

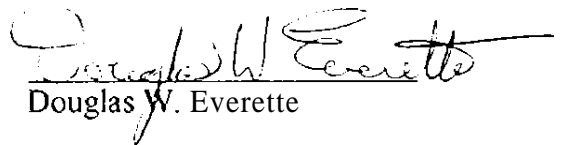
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